

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROBERT C. NELSON,

Plaintiff,

vs.

Case No. 2:09-CV-1010
Magistrate Judge King

FEDERAL BUREAU OF PRISONS,

Defendant.

OPINION AND ORDER

Plaintiff, a federal prisoner proceeding without the assistance of counsel, brings this action pursuant to the Federal Tort Claims Act, 28 U.S.C. § 2671, *et seq.* Plaintiff alleges that, while he was in the custody of the Federal Bureau of Prisons at a facility in Milan, Michigan, another inmate misappropriated his identity card and used it to purchase items from the commissary, charging plaintiff's account. With the consent of the parties, 28 U.S.C. § 636(c), this matter is before the Court on plaintiff's *Motion for Punitive Damages*, Doc. No. 41. For the reasons that follow, plaintiff's motion will be denied. Moreover, plaintiff will be ordered to show cause why the case should not be dismissed, with prejudice, as settled.

This Court previously held that, should plaintiff prevail on his claim of negligence, "his recovery will be limited to \$236.10," *i.e.*, the amount sought in his administrative claim. *Opinion and Order*, Doc. No. 28, pp. 5-6. Thereafter, plaintiff filed his *Motion for Punitive Damages*, commenting that, by that motion, he intends to "renew[]" this claim, which had been "previously dismissed 'without prejudice'" by

the Court. *Motion for Punitive Damages*, p.1. As an initial matter, the Court notes that neither plaintiff's original *Complaint*, Doc. No. 2, nor plaintiff's *Amended Complaint*, Doc. No. 23, asserted a claim for punitive damages.¹ In any event, however, plaintiff cannot prevail on such a claim. See 28 U.S.C. §2674 (the United States "shall not be liable . . . for punitive damages").

Accordingly, plaintiff's *Motion for Punitive Damages*, Doc. No. 41, is **DENIED**.

Defendant represents that, on July 26, 2011, plaintiff signed a settlement agreement in which plaintiff agreed to dismiss all claims in exchange for payment of \$586.10. *Stipulation for Compromise Settlement and Release of Federal Tort Claims Act Claims Pursuant to 28 U.S.C. §2677*, attached as Exhibit A, to *Response in Opposition to Motion for Punitive Damages*, Doc. No. 43. Plaintiff is **ORDERED TO SHOW CAUSE**, within twenty-one (21) days, why the action should not be dismissed, with prejudice, as settled. Plaintiff's failure to do so will result in the dismissal of the action with prejudice.

s/Norah McCann King
Norah M^cCann King
United States Magistrate Judge

September 19, 2011

¹The original *Complaint* asserted a claim for monetary damages based on emotional distress, but that claim was dismissed by the Court. *Opinion and Order*, Doc. No. 26.